

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1041 of 1997

with

SPECIAL CIVIL APPLICATION No 4284 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

JIVABHAI ISABBHAI

Appearance:

1. Special Civil Application No. 1041 of 1997
Mr. Dabhi, AGP for Petitioner No. 1
MR AK CLERK for Respondent No. 1,3-4,9-10,13-16,19-20
NOTICE SERVED BY DS for Respondent No. 2,5-8,11-12,17-18,21-27
NOTICE SERVED for Respondent No. 28
 2. Special Civil Application No. 4284 of 2000
MR AK CLERK for Petitioner No. 1
Mr. Dabhi, AGP for Respondent No. 1
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Date of decision: 17/09/2004

ORAL JUDGEMENT

Heard learned AGP Mr. Dabhi for the State of Gujarat and Mr. A.K. Clerk, learned Advocate for the workmen. By filing special civil application no. 1041 of 1997, the petitioner State of Gujarat has challenged the order of the Labour Court, Rajkot in Recovery Application No. 1600 of 1986 dated 15th June, 1995 wherein the labour court has directed the petitioner to make payment of 496 weekly off from 1.9.1976 to 31.3.1986 at the double rate based on the minimum wage rate of the respective years to the workmen concerned within thirty days from the date of receipt of the said order. In Special Civil Application No.4284 of 2000 filed by the petitioners workmen, order of the labour court dated 18.1.2000 passed by the labour court, Rajkot in application dated 18.1.2000 in Recovery Application No. 1600 of 1986 wherein the prayer was made by the workmen for disbursement of the amount deposited by the State of Gujarat and the said prayer was rejected by the labour court on the ground of pendency of Special Civil Application No. 1041 of 1997.

In Special Civil Application No. 1041 of 1997 filed by the State of Gujarat, initially, rule was issued by this Court and notice as to interim relief was issued on 11th April, 1997 and on 23rd July, 1997, interim relief was refused by this Court.

During the course of hearing of these petitions, it was submitted by the learned AGP Mr. Dabhi for the State that the labour court has committed an error in entertaining the recovery application filed by 28 workmen under section 33-C-2 of the ID Act, 1947. He submits that it ought to have been appreciated by the labour court that there was no previous adjudication about the rights of the workmen concerned between the parties and, therefore, the labour court ought to have refrained it from entertaining the said application. In support of this contention, he placed reliance on the decision reported in 1988 (3) SCC 457, 1998 (2) GLR 984, 1997 (3) GLR 195. He also submits that only one workman was examined before the labour court at Exh. 12 who was not having personal knowledge or detail in respect of the claim of the other 27 workmen, therefore, labour court has erred in granting benefits in favour of all the

workmen by considering the deposition of one workman. He also submits that as and when the work was taken from the workman on weekly off by the petitioner, OT Wages were being paid by the petitioner to the concerned workmen and, therefore, the labour court has committed gross error in granting relief in favour of the workmen. Except that, no other contention was raised by the learned AGP Mr. Dabhi before this Court. No other decisions were cited by the learned AGP Mr. Dabhi before this Court except the decisions referred to above. Relevant portion of the order made by the labour court was read over by Mr. Dabhi before this Court.

Learned advocate Mr. Clerk, on the other hand, submitted that the said recovery application was filed by the workmen before the labour court under section 33-C-2 of the ID Act, 1947. If any amount is due and payable to a workman, then, such workman can file recovery application before the labour court. He submits that this was the statutory claim of the workmen under the provisions of the Minimum Wages Act. He also submits that when there is clear admission before the labour court about the claim of the workmen, then, there is no necessity to have prior adjudication under the provisions of the ID Act, therefore, none of the decisions cited by Mr. Dabhi would apply to the facts of the present case. He submits that the facts of the decisions cited by Mr. Dabhi are different from the facts of the case before hand. He also submitted that looking to the evidence of the witness for the petitioner at Exh. 17, he has admitted the claim of the workmen that the payment was not made by the petitioner to the concerned workmen. Relevant records were not produced by the employer before the labour court to disprove the claim of the workmen and, therefore, the labour court has relied upon the evidence on record, evidence of the witness for the petitioner at Exh. 17 in particular and has passed the order in question which is quite just and proper and, therefore, no interference of this Court is necessary.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order made by the labour court in Recovery Application which is under challenge in the petition filed by the State of Gujarat. The question is as to whether the workman is entitled for the OT Wages if he is required to work on weekly off. It is not the case of the State of Gujarat that the Minimum Wages Act is not applicable to it. On the contrary, it is the specific case of the State of Gujarat that it was paying minimum wages to the concerned workmen by dividing it in 26 days

which includes the wages of the weekly off. The provisions of the Minimum Wages Act are applicable to the petitioner. Rule 23 of the Minimum Wages Rules, 1961 provides for weekly day of rest. Sub Rule (4) of Rule 23 of the said Rules provides that if an employee is granted for the rest day wages calculated at the rate applicable to the next preceding day and in case he works on the rest day and has been given substitute rest day, he shall be paid wages for the rest day on which he worked at the OT Rate and wages of the substitute rest day at the rate applicable to the next preceding date.

Therefore, according to his submissions, Rule 23(4) is giving right to the workman if he is required to work on any rest day, then, he is entitled for two benefits from the employer. One is the substitute rest day and the second is that he is entitled for the wages at the double rate on the day of rest for which he was asked to work by the employer. In this case, substitute rest day was not given by the employer. No doubt, for that, no claim has been made by the workmen but the claim of the workmen was for the payment of over time wages for their working on the rest day. Therefore, it is statutory claim made by the workman not denied by the petitioner. It has also not been disproved by the petitioner before the labour court and, therefore, the labour court has rightly granted benefits in terms of money in favour of an employee.

Before the labour court, reply was filed by the petitioner. One workman was examined on behalf of the workmen at Exh. 12 and witness for the petitioner namely Pradeepkumar Kothari was examined at Exh. 17.

In his deposition on oath at Exh. 17, witness for the petitioner has deposed that the rest day was given to the workmen as per the minimum Wages Act and when the work on the rest day was taken, they were being paid the amount at the double rate to the concerned employees. He admits that all these details are being maintained by the Department in the Muster Roll as the Vouchers and the Presence Register. This can be produced by the petitioner before the labour court and accordingly, it was deposed by the witness for the petitioner that as and when the record is available, same will be produced alongwith presence register, muster and voucher of payment made to the concerned workmen. It was also admitted by the said witness that it is true that under the Minimum Wages Act, one rest day must have to be given to the employee and if he is required to work on the rest day, then, he is entitled for double wages for

the said rest day. Therefore, it was a burden upon the petitioner to prove that the amount at the double rate was paid to the concerned workmen while working on the rest day. No documentary evidence was produced by the petitioner before the labour court to disprove the claim of the workmen. Therefore, the labour court has appreciated the oral evidence as well as the written submissions made by the parties and then it came to the conclusion that as per Rule 23(4) of the Rules, the workmen are entitled for the amount on double rate because they had worked on the weekly off. The labour court has also considered that though the petitioner is in custody of all the relevant documents on the basis of which it could disprove the claim of the workmen, it has not produced the documents before the labour court. Therefore, ultimately, the labour court has believed the evidence of the workmen in light of the evidence of the witness for the petitioner (Exh. 17) wherein certain admissions were made by the witness as regards claim of the workmen. According to my opinion, in view of the deposition of the witness for the petitioner at Exh. 17, the labour court was right in believing the evidence of the workmen.

As regards the contention of the learned AGP Mr. Dabhi that the labour court has erred in granting benefits in favour of the workmen on the basis of the evidence of one workman who was not having personal knowledge or details about the other 27 workmen, I have considered the order in question. All the workmen were required to work on the rest day on different site. That fact was narrated by one workman at Exh. 12. Said witness is not having personal knowledge or detail about each workman working at different site. According to my opinion, merely because the witness is not having personal details or knowledge about other workmen working on different sites, that does not mean that his evidence should not be believed. Application was made on behalf of the workmen before the labour court on 17th October, 1988 that all the relevant record be produced by the petitioner before the labour court but no such relevant record was produced by the petitioner before the labour court and in absence of such record which is in custody of the petitioner as per the deposition of the witness for the petitioner at Exh. 17, the labour court was right in appreciating the evidence on record and statutory provisions of the Minimum Wages Act and the Rules and was right in passing the order in question dated 15.6.95.

According to my opinion, the evidence of the

witness for the petitioner at Exh. 17 is self-contradictory in a way that at one point of time, it was deposed by him that they were not paid the double rate wages while taking work from them on rest day and in his subsequent evidence, it was deposed by him that the double rate amount was being paid to each of the concerned workmen as and when they were required to work on rest day.

After perusal of the order in question, according to my opinion, the labour court was right in passing the order in question. The submissions made by the learned AGP Mr. Dabhi before this court are not accepted on the ground that the claim of the workmen was admitted by the petitioner and was not disputed by the petitioner before the labour court and considering the deposition of the witness of the petitioner at Exh.17, no prior adjudication under section 10 of the ID Act, 1947 was necessary in the peculiar facts of this case. The submissions made by the learned AGP Mr. Dabhi before this Court are not acceptable to this court also for the reason that though it was admitted by the witness for the petitioner that such relevant records namely Muster Roll, Presence Register etc. was in custody of the petitioner, but it was not produced by it before the labour court. It was not the case of the petitioner that such record was not in its custody. No reason was assigned for non production of such record before the labour court and therefore the labour court was right in drawing adverse inference against the petitioner and, therefore, such submissions are not acceptable and the same are, therefore, rejected.

I have considered the decisions cited by the learned AGP Mr. Dabhi before this Court. I am in agreement with the principles laid down in the said decisions. However, in the peculiar facts of this case, considering the admissions of the petitioner as per the evidence of the witness for the petitioner at Exh. 17, prior adjudication of the claim was not necessary and, therefore, the labour court was right in entertaining the application for recovery under sec.33-C-2 of the ID Act, 1947 and in view of these facts of the present case, the decisions cited at Bar by Mr. Dabhi are not applicable to the facts of the present case.

Learned AGP Mr. Dabhi has not been able to point out any infirmity and/or procedural irregularity committed by the labour court in passing the order in

question. He has also not been able to point out whether the payments required to be made to the workmen under rule 23(4) of the Rules framed under the Minimum Wages Act were made to the workmen or not. This Court is having limited jurisdiction under Article 227 of the Constitution of India. In exercise of such powers, this court cannot act as an appellate authority and cannot reappreciate the evidence which was appreciated by the labour court. Therefore, there is no substance in this petition filed by the State of Gujarat and, therefore, same is dismissed. Rule is discharged. No order as to costs.

Since this Court has today dismissed Special Civil Application No. 1041 of 1997, there is no need to pass any order on the petition being Special Civil Application No. 4284 of 2000 against the order of the labour court dated 18th January, 2000 wherein the prayer of the workmen for disbursement of the amount deposited by the petitioner was rejected by the labour court on the ground of pendency of Special Civil Application No. 1041 of 1997. Same is, therefore, disposed of. Rule is discharged. No order as to costs. However, now, the labour court concerned is directed to disburse the amount deposited by the petitioner as per the order of the labour court dated 15.6.1995 in Recovery Application No. 1600 of 1986 to the concerned workmen within one month from the date of receipt of copy of this order.

(H.K. Rathod, J.)

Vyas